

July 19, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, DC 20554

Re: Notice of *Ex Parte* in WC Docket No. 06-122  
InComm Solutions, Inc.

Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, we hereby provide notice of a written and oral ex parte presentation in connection with the above captioned proceeding. On July 17, 2013, E. Paul Cooke, President of InComm Solutions, Inc., ("InComm") and undersigned counsel met with Chin Yoo, Charles Eberle, Claudia Fox, Erica Myers, and Christine Kennedy of the Telecommunications Access Policy Division of the Wireline Competition Bureau ("Bureau"). The purpose of our visit was to discuss the status and merits of InComm's request for review of a decision of the universal service administrator and petition for waiver filed on February 6, 2012 in the above docket ("Request"). InComm, through its Request, asks the Commission to grant relief from the double assessment of revenue for universal service fund ("USF") contribution purposes. The revenue at issue was reported as USF-assessable both by InComm, and previously, by InComm's underlying wholesale carrier. While InComm is not contesting penalties associated with its late filing of Telecommunications Reporting Worksheets, InComm is requesting the following relief:

1. USF invoice credit equal to the double-assessment amount (*i.e.*, the double reported revenue amount assessed with the appropriate USF contribution calculation);
2. Relief from any interest assessed on the disputed amounts since October 14, 2011 (the date InComm notified USAC of same).

InComm is not seeking a credit for any USF surcharges remitted to InComm's underlying carrier.

In our meeting Mr. Cooke reviewed the factual background leading up to InComm's claim and discussed the hardships that a delay in resolving this matter is causing InComm. Regarding the substance of InComm's legal arguments, we discussed the Commission's long-

standing policy against double assessment and the importance of having a practical mechanism for resolving legitimate double-assessment situations. We noted that 47 C.F.R. section 54.713(a) which authorizes USAC to assess late penalties also provides USAC with authority to refund USF over-payments. We also discussed (referring to the attached handout) how InComm's requested remedy would ensure the USF was made whole – in contrast to the remedy sought by petitioners in the ATS cases.<sup>1</sup>

We explained that USAC's contention that a revenue audit was required to resolve this situation was not supported in the record and expressed concern that an "audit requirement" was being invoked by USAC as a convenient bar to resolving double-assessment cases like InComm. We also discussed the reasons why it was inappropriate, impractical, and impossible for InComm to resolve the double-assessment issue with its underlying wholesale carrier – and that requiring so would impose double-collection of USF contributions as a *de facto* further penalty. We discussed additional differences between InComm's double-assessment claim and the double-payment claims rejected by the Wireline Competition Bureau in the ATS decision – including the fact that the Bureau found wholesale carriers in those cases culpable for having improperly attempted to assume their reseller customers' USF obligations. Indeed, InComm agrees that USAC and the Commission rightly declined to get involved in what were private contractual disputes between resellers and wholesalers – a dispute which does not exist here where InComm's wholesaler acted in accordance with the rules by reporting InComm's revenue as part of the USF contribution base in the first instance.

Finally, we discussed the type of information InComm might be able to provide that would further corroborate the double-assessed revenue amounts.

We appreciated everyone's time and attention and look forward to a timely resolution of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey A. Mitchell".

Jeffrey A. Mitchell  
Counsel for InComm Solutions, Inc.

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<sup>1</sup> See *Federal-State Joint Board on Universal Service, American Telecommunication Systems, Inc., Equivoice, Inc., Eureka Broadband Corporation, TON Services, Inc., Value-Added Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 5009, 5011 (Wireline Comp. Bur. 2007).

# INCOMM MEETING WITH FCC STAFF – JULY 17, 2013

## Wholesale Revenue

	Wholesale Carrier	Reseller
Revenue	\$100	\$120
USF Contribution	0	\$120 * USF contribution factor
USF Surcharge		\$0

## Wholesale Revenue: Non-payment by Reseller

	Wholesale Carrier	Reseller	Contribution Base Impact
Revenue	\$100	\$120	-\$20
USF Contribution	\$100 * contribution factor	\$0	
USF Surcharge		\$100 * carrier surcharge factor	

## Wholesale Revenue: Double Assessment

	Wholesale Carrier	Reseller	Contribution Base Impact
Revenue	\$100	\$120	+\$100
USF Contribution	\$100 * contribution factor	\$120 * contribution factor	
USF Surcharge		\$100 * carrier surcharge factor	

Potential Impact on USF		
	ATS Cases	InComm
<b>Relief sought</b>	<ul style="list-style-type: none"> <li>USF exemption based on payment by Wholesale Carrier</li> <li>Refund of USF Surcharges paid to Wholesale Carrier</li> <li>Refund of late fees/interest</li> </ul>	<ul style="list-style-type: none"> <li>Refund of double-assessment = Wholesale Carrier's reported revenue * USF contribution factor</li> </ul>
<b>Burden on administrator</b>	<ul style="list-style-type: none"> <li>No ability to validate USF Surcharges</li> <li>Double-reported revenue <u>not</u> disclosed – audit needed</li> <li>No information correlated by both carriers</li> </ul>	<ul style="list-style-type: none"> <li>USF surcharges not at issue</li> <li>Wholesale Carrier's double-reported revenue correlated by both carriers</li> <li>No need or basis for an audit</li> </ul>
<b>Loss to USF</b>	<ul style="list-style-type: none"> <li>Difference between USF Surcharges assessed and USF Contributions due                             <ul style="list-style-type: none"> <li>Each carrier assesses surcharges differently – not required to be the same as USF formula where contribution factor changes each quarter and circularity factor applied</li> </ul> </li> <li>Late fees/interest (compensates USAC for admin costs<sup>1</sup>)</li> </ul>	None

<sup>1</sup> See 47 C.F.R. § 54.713(a) ("Once a contributor complies with the Telecommunications Reporting Worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interest, or costs").